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2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4

5
6 DEANNA L. FREITAG,

7 Plaintiff,

8 v.

9 CALIFORNIA DEPARTMENT OF
10 CORRECTIONS, et al.,

11 Defendants.
12

NO. C00-2278 TEH

ORDER SETTING BRIEFING
SCHEDULE RE: ATTORNEYS'
FEES AND COSTS

13 On December 17, 2012, the parties filed a joint statement regarding the status of
14 Plaintiff's request for attorneys' fees and costs, as required by the Court's November 5, 2012
15 order. Plaintiff's counsel expressed her belief that a referral to a special master was
16 unnecessary because "the amount charged by a special master to resolve any disputes could
17 easily and significantly exceed the amount in controversy," thus making it "not financially
18 feasible to pursue any request for fees in this matter." *E.g.* Joint Statement at 5. The Court
19 finds it unlikely that a special master would charge more than the approximate \$56,000 at
20 issue, and counsel's conclusion is perhaps an indication that she does not believe a special
21 master would award all or any significant part of the amount claimed.

22 In addition, the parties' meeting and conferring after the Court's November 5, 2012
23 order appears to have been limited to a single telephone call that "lasted less than five
24 minutes." *Id.* at 3. Defendants' counsel further describes Plaintiff's counsel as unresponsive
25 to requests for a more meaningful discussion. *Id.* at 2-3. Notably, Plaintiff's counsel did not
26 rebut Defendants' counsel's description of events. To meet and confer "means to
27 communicate directly *and discuss in good faith* the issue(s) required under the particular
28 Rule or order." Civ. L.R. 1-5(n) (emphasis added). It appears that Plaintiff's counsel failed

1 to do so in this case, which may again reflect counsel's belief that her request is not entirely
2 reasonable.

3 Nonetheless, and despite this Court's prior admonitions that it would appoint a special
4 master, the Court is concerned that counsel would be deterred from seeking fees out of fear
5 that she would be ordered to pay more to a special master than she would be awarded. The
6 Court will therefore itself resolve any remaining disputes over fees and costs. Accordingly,
7 with good cause appearing, IT IS HEREBY ORDERED that:

8 1. If Plaintiff continues to seek any fees and costs beyond the \$276.45 for which
9 payment has already been initiated by Defendants, then she shall file a motion for attorneys'
10 fees and costs on or before **January 14, 2013**. Defendants' opposition shall be due on or
11 before **January 28, 2013**, and Plaintiff's reply shall be due on or before **February 4, 2013**.
12 The matter will then be deemed submitted on the papers without oral argument.

13 2. Any fees and costs not requested by a motion filed by January 14, 2013, shall be
14 deemed as waived.

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16 **IT IS SO ORDERED.**

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18 Dated: 12/20/12



THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT